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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,444	11/26/2003	Jean-Philippe Jomini	7419-0001	5970

39207 7590 03/08/2005

SACCO & ASSOCIATES, PA
P.O. BOX 30999
PALM BEACH GARDENS, FL 33420-0999

EXAMINER

PASS, NATALIE

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,444

Applicant(s)

JOMINI ET AL.

Examiner

Natalie A. Pass

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 6 December 2004. Claims 2, 6, and 20 have been amended. Claims 1-26 remain pending.

Claim Objections

2. The objection to claim 20 because of informalities is hereby withdrawn due to the amendment filed 6 December 2004.

Claim Rejections - 35 USC §101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

4. Claims 1-3, 6, 8-11, 13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-3, 6, 8-11, 13 only recite abstract ideas. The recited claims detailing the steps of monitoring and comparing parameters, triggering exceptions and initiating actions do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute different parts of a method and system of monitoring health-related parameters

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces an exception when data deviates from defined rules (i.e., repeatable) that can be used in taking action to modify conditions (i.e., useful and tangible).

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-3, 6, 8-11, 13 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claim 1-3, 6-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Reed et al., U.S. Patent Number 6, 524, 239.

(A) As per claim 1, Reed teaches a method for in-home monitoring comprising the steps of:

monitoring at least one behavioral parameter associated with a person (Reed; Abstract, column 2, lines 5-8);

comparing the behavioral parameter to at least one pre-determined rule which is based upon a behavioral profile (Reed; column 8, lines 52-62);

triggering an exception if the behavioral parameter does not match the behavioral profile (Reed; column 2, lines 38-46); and

initiating at least one action responsive to the exception (Reed; column 8, lines 59-62).

(B) As per claims 2-3, 6-7, Reed teaches a method as analyzed and discussed in claim 1 above

said initiating at least one action step further comprising the step of forwarding the exception to a monitoring system (Reed; column 10, lines 10-17);

further comprising the step of empirically determining the behavioral profile based upon behavioral patterns of the person (Reed; column 9, lines 2-7, 60-61);

wherein the behavioral parameter is selected from the group consisting of an acoustic signal, a movement of a person, a location of a person, an opening of a window, a closing of a window, an opening of a door, a closing of a door, an activation of an appliance, a deactivation of an appliance, an activation of a light, and a deactivation of a light (Reed; column 2, lines 20-23);

wherein data representing the behavioral parameter is wirelessly propagated from a sensing device to a device interface (Reed; column 4, lines 9-11).

(C) As per claims 8-9, Reed teaches a method as analyzed and discussed in claim 1 above further comprising the steps of:

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monitoring at least one environment parameter (Reed; column 2, lines 28-29, column 6, lines 54-57);

comparing the environment parameter to at least one pre-determined environment rule; and (Reed; column 2, lines 38-46);

triggering the exception if the environment parameter correlates to an environment condition that has been pre-defined to trigger the exception (Reed; column 2, lines 38-55);

wherein the environment parameter is selected from the group consisting of a carbon monoxide level, a smoke level, a temperature, an amount of water intrusion, a moisture level, a power failure, a weather condition, an earthquake, an acoustic signal, an opening of a window, a closing of a window, an opening of a door, a closing of a door, and a detected motion (Reed; column 6, lines 39-41).

(D) As per claims 10-14, Reed teaches a method as analyzed and discussed in claim 1 above further comprising the steps of:

monitoring at least one medical parameter (Reed; column 10, lines 11-13);

comparing the medical parameter to at least one pre-determined medical rule (Reed; column 10, lines 4-17); and

triggering the exception if the medical parameter correlates to a medical condition pre-defined to trigger the exception (Reed; column 10, lines 4-17);

wherein the medical parameter is selected from the group consisting of a blood pressure, a pulse, a blood glucose level, a blood oxygen level, a weight, a heart rhythm, a brain wave, and a breathing pattern (Reed; column 5, lines 1-7);

further comprising the step of providing a processing device accessed by the subject or resident caregiver (reads on within a home of the person) wherein the processing device provides the monitored behavioral parameters to at least one monitoring station located remotely (reads on outside of the home) (Reed; column 1, line 66 to column 2, line 4);

further comprising the step of using a variety of audible and visual cues to prompt medication intake (reads on generating at least one medication reminder) (Reed; column 7, lines 56-61); and

wherein said step of initiating at least one action comprises enabling the subject to issue an emergency call to the system in the event immediate attention is required (reads on generating a client-phone localized emergency call) (Reed; column 10, lines 13-17).

(E) Claim 15 differs from method claim 1, in that it is a system rather than a method for monitoring at least one behavioral parameter associated with a person.

System claims 15-20, 22, 24-25 repeat the subject matter of claims 1, 2, 7, 12, 2, 12, 14, 10, and 11, respectively, as a set of elements rather than a series of steps. As the underlying processes of claims 1, 2, 7, 12, 2, 12, 14, 10, and 11 have been shown to be fully disclosed by the teachings of Reed in the above rejections of claims 1, 2, 7, 12, 2, 12, 14, 10, and 11, it is readily apparent that the system disclosed by Reed includes the apparatus to perform these functions. As such, these limitations are rejected for the same reasons given above for method claims 1, 2, 7, 12, 2, 12, 14, 10, and 11, and incorporated herein.

(F) As per claims 21, 23, Reed teaches a system as analyzed and discussed in claim 15, 18, and 20 above

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wherein said remote commands control at least one item selected from the group consisting of an appliance, a lamp, a sensor and a medical device (Reed; column 4, lines 51-59); and

wherein said sensor is selected from the group consisting of a microphone, a video camera, an infrared motion detector, a carbon monoxide detector, a smoke detector, a fire detector, a water intrusion detector, a power failure detector, a door contact and a window contact (Reed; column 6, lines 39-41).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al., U.S. Patent Number 6, 524, 239, as applied to claim 1 above, and further in view of Brudny et al., U.S. Patent Number 5, 810, 747.

(A) As per claims 4-5, Reed teaches a method as analyzed and discussed in claim 1 above.

Reed fails to explicitly disclose a method wherein said comparing step further includes the step of analyzing the behavioral parameter using artificial intelligence; and

wherein the artificial intelligence is implemented with an inference engine.

However, the above features are well-known in the art, as evidenced by Brudny.

In particular, Brudny teaches
a method wherein said comparing step further includes the step of analyzing the behavioral parameter using a neural network (reads on artificial intelligence) (Brudny; column 18, lines 16-19, column 19, lines 8-11); and
wherein the artificial intelligence is implemented with an inference engine (Brudny; column 19, lines 12-17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Reed to include wherein said comparing step further includes the step of analyzing the behavioral parameter using artificial intelligence; and wherein the artificial intelligence is implemented with an inference engine, as taught by Brudny, with the motivations of monitoring progress of one or more individuals in a concurrent manner and paralleling the decision making logic of a human expert, thereby enhancing the ability of the provider to attend to several patients at the same time, providing considerable economies of scale (Brudny; column 3, lines 35-37, 45-47, 61-62).

9. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al., U.S. Patent Number 6, 524, 239, as applied to claim 15 above, and further in view of Chen et al., U.S. Patent Number 5, 553, 609.

(A) As per claim 26, Reed teaches a system as analyzed and discussed in claim 15 above.

Reed fails to explicitly disclose a system

further comprising at least one roving robot which monitors at least one of the behavioral parameters, environment parameters and a physical attribute of a person.

However, the above features are well-known in the art, as evidenced by Chen.

In particular, Chen teaches a system

further comprising at least one robot that can administer medication, perform cleaning functions, prepare meals, and perform various other tasks (reads on roving robot) (Chen; column 16, lines 60-63) which monitors at least one of the behavioral parameters, environment parameters and a bodily condition (reads on physical attribute) of a person (Chen; column 3, line 37 to column 4, line 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Reed to include further comprising at least one roving robot which monitors at least one of the behavioral parameters, environment parameters and a physical attribute of a person, as taught by Chen, with the motivations of utilizing new technology which will have the effect of reducing the cost of health care while improving the quality of the health care system as the baby boomers become older and the manpower in every discipline continues to dwindle (Chen; column 1, lines 45-50).

Response to Arguments

10. Applicant's arguments with respect to claims 1-26 in the amendment filed 6 December 2004 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references Lane et al., United States Patent Number 6, 002, 994, Wheat, United States Patent Application Publication US2002/0095312, Clendenon, United States Patent 6, 567, 785, and Breese et al., United States Patent Number 5, 987, 415 teach the environment of monitoring behavioral and other health parameters.

12. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington D.C. 20231

or faxed to: **(703) 305-7687.**

For informal or draft communications, please
label "PROPOSED" or "DRAFT" on the front page of
the communication and do NOT sign the
communication.

After Final communications should be labeled
"Box AF."


Hand-delivered responses should be brought to Crystal
Park 5, 2451 Crystal Drive, Arlington, VA, Seventh Floor
(Receptionist).

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (703) 305-3980. It should be noted that during the month of April 2005, the examiner's phone number will change to (571) 272-6774, however the current phone number will remain in service until the change takes place. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (703) 305-9588. It should be noted that during the month of April 2005, Joseph Thomas' phone number will change to (571) 272-6776, however the current phone number will remain in service until the change takes place. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Natalie A. Pass

March 2, 2005


ALEXANDER KALINOWSKI
PRIMARY EXAMINER